

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSURE

##### PREAMBLE

- 1. Sections Affected**

R9-10-901	Amend
R9-10-905	Amend
R9-10-908	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(F)  
Implementing statutes: A.R.S. §§ 36-405 and 36-406
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 536, February 21, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Judy Sgrillo, Program Manager
Address:	Department of Health Services 1647 E. Morten, Suite 130 Phoenix, AZ 85020
Telephone:	(602) 674-9705
Fax:	(602) 395-8910
E-mail:	jsgrill@hs.state.az.us
	or
Name:	Kathleen Phillips, Rules Administrator
Address:	Department of Health Services 1740 W. Adams, Suite 102 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
E-mail:	kphilli@hs.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 36-136(F) provides the general statutory authority for the Department of Health Services (Department) to make and amend rules. A.R.S. § 36-405(A) requires the Director of the Department to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. It further requires that the standards and requirements relate to the construction; equipment; sanitation; staffing for medical, nursing, and personal care services; and recordkeeping pertaining to the administration of medical, nursing, and personal care services in accordance with generally accepted

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practices of health care. A.R.S. § 36-405(B) allows the Department to, by rule, classify and subclassify health care institutions according to character, size, and range of services provided.

Title 9, Chapter 10, Article 9 of the *Arizona Administrative Code* contains minimum standards for all licensed nursing care institutions. The Department recently made a new Article 9, which was approved by the Governor's Regulatory Review Council on January 7, 2003. The Department is amending Sections R9-10-905 and R9-10-908 only to clarify the language pertaining to the tuberculosis testing requirements for staff, volunteers, and residents.

6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

The Department anticipates that any costs associated with this rulemaking will be minimal. The Department will incur minimal costs to promulgate the rulemaking and notify the providers of the changes. The Department does not anticipate incurring ongoing costs resulting from changes in the proposed rules.

Since 1995, the rules for nursing care institutions have required annual tuberculosis (TB) testing for staff, volunteers, and residents. There is some concern that the new rules recently made may be confusing with regard to the TB requirements. This rulemaking is to clarify the requirements. The initial and annual TB testing requirements are combined in the current rules. The new rules being promulgated have separated the requirements for clarification. The nursing care institutions retest staff, volunteers, and residents annually based on the expiration of the last TB test. The new rule provides a 30-day period before the expiration of the last TB test for nursing care institutions to perform retests. The nursing care institutions should not incur increased costs for this change.

The Department has added a new requirement that a resident transferred from one nursing care institution to another nursing care institution is not required to obtain new evidence of freedom from infectious pulmonary tuberculosis at the time of admission if less than 12 months has passed since the previous evidence was obtained and, if such evidence is transferred with the resident. The Department anticipates that this addition to the rules should result in a minimal cost savings to a nursing care institution.

The Department believes that clarifying the requirements increases understandability, and is the least intrusive and least costly method of achieving the purpose of the proposed rulemaking.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Judy Sgrillo, Program Manager

Address: Department of Health Services  
1647 E. Morten, Suite 130  
Phoenix, AZ 85020

Telephone: (602) 674-9705

Fax: (602) 395-8910

E-mail: jsgrill@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services  
1740 W. Adams, Suite 102  
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department has scheduled the following oral proceeding:

Date: May 29, 2003

Time: 9:00 a.m.

Location: Department of Health Services  
1647 E. Morten, Hearing Room  
Phoenix, AZ 85020

A person may submit written comments on the proposed rules no later than the close of record, 5:00 p.m., May 29, 2003, to the individuals listed in items #4 and #9.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

Not applicable

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES**

**HEALTH CARE INSTITUTIONS: LICENSURE**

**ARTICLE 9. NURSING CARE INSTITUTIONS**

Section

R9-10-901. Definitions

R9-10-905. Staff and Volunteers

R9-10-908. Admission

**ARTICLE 9. NURSING CARE INSTITUTIONS**

**R9-10-901. Definitions**

No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. "Anniversary date" means the annual recurrence of the date of an event.

~~6~~7. No change

~~7~~8. No change

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**R9-10-905. Staff and Volunteers**

- A. No change
1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
  7. No change
  8. ~~A staff member or a volunteer submits one of the following as evidence of freedom from infectious pulmonary tuberculosis at the start of employment or volunteer service and every 12 months from the starting date of employment or volunteer service:~~
    - a. ~~Documentation of a negative Mantoux skin test or other test for tuberculosis recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer, administered within six months of the starting date of employment or volunteer service;~~
    - b. ~~If the staff member or volunteer had a test result positive for infectious pulmonary tuberculosis, a physician's written statement dated within six months of the starting date of employment or volunteer service, that the staff member is free from infectious pulmonary tuberculosis; or~~
    - c. ~~Documentation of a chest x-ray negative for infectious pulmonary tuberculosis dated within six months of the starting date of employment or volunteer service;~~
  8. At the start of employment or volunteer service, a staff member or a volunteer submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
    - a. Documentation of a negative Mantoux skin test or other test for tuberculosis recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within six months before the starting date of employment or volunteer service; or
    - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of employment or volunteer service, that the staff member or volunteer is free from infectious pulmonary tuberculosis;
  9. Every 12 months after the date of testing or date of the written statement by a physician, physician assistant, or registered nurse practitioner, a staff member or a volunteer submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
    - a. Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within 30 days before the anniversary date of the last test or last written statement; or
    - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within 30 days before the anniversary date of the last written statement, that the staff member or volunteer is free from infectious pulmonary tuberculosis;
  - 9-10. A record for a staff member and a volunteer is maintained that includes:
    - a. An application including the date of employment or volunteer service and the first working day or first day of volunteer service;
    - b. Verification of orientation and, if applicable, certification and licensure;
    - c. Documentation that the staff member or volunteer is free from infectious pulmonary tuberculosis as required in subsection (A)(8); and
    - d. If applicable, documentation of compliance with the fingerprinting requirements in A.R.S. § 36-411;

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~~40.11.~~A staff member or volunteer record and in-service education documentation ~~is~~ are provided to the Department for review:

- a. For a current staff member and volunteer, as soon as possible but not more than two hours from the time of the Department's request; and
- b. For a staff member and volunteer who are not currently working or providing volunteer services in the nursing care institution, within two hours from the Department's request;

~~44.12.~~A staff member or volunteer record and in-service education documentation ~~is~~ are maintained by the nursing care institution for at least two years after the last date of volunteer service or work.

- B.** No change  
**C.** No change  
**D.** No change

**R9-10-908. Admission**

No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. ~~At the time of admission and every 12 months from the date of admission, a resident submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:~~
  - a. ~~Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer, administered within six months of the date of admission;~~
  - b. ~~If the resident had a test result positive for infectious pulmonary tuberculosis, a physician's written statement dated within six months of admission, that the resident is free from infectious pulmonary tuberculosis; or~~
  - c. ~~Documentation of a chest x-ray negative for infectious pulmonary tuberculosis dated within six months of admission; and~~
6. At the time of admission, a resident submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
  - a. Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within six months before the date of admission; or
  - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within six months before admission, that the resident is free from infectious pulmonary tuberculosis;
7. Every 12 months after the date of testing or date of the written statement by a physician, physician assistant, or registered nurse practitioner, a resident submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
  - a. Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within 30 days before the anniversary date of the last test or last written statement; or
  - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within 30 days before the anniversary date of the last written statement, that the resident is free from infectious pulmonary tuberculosis;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be retested for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner if:
  - a. Fewer than 12 months has passed since the resident was last tested for tuberculosis or since the date of the last written statement; and
  - b. The documentation of freedom from infectious pulmonary tuberculosis required in subsection (6) accompanies the resident at the time of transfer;
- ~~7.9.~~ No change

## NOTICE OF PROPOSED RULEMAKING

### TITLE 12. NATURAL RESOURCES

#### CHAPTER 5. STATE LAND DEPARTMENT

##### PREAMBLE

**1. Sections Affected**

R12-5-505  
R12-5-505  
R12-5-506  
R12-5-506  
R12-5-516  
R12-5-534

**Rulemaking Action**

Repeal  
New Section  
Repeal  
New Section  
Repeal  
Repeal

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 37-132(A)(1)

Implementing statute: A.R.S. § 37-284

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 846, March 7, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Richard B. Oxford, Director  
Land Information, Title & Transfer Division

Address: Arizona State Land Department  
1616 W. Adams  
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 37-284 provides a general process in which conflicting lease applications for leased State Trust surface lands may be processed.

The proposed rule clarifies the procedure in considering conflicting applications to lease State Trust land (surface only), to define equities to be considered, to require an applicant to submit a statement of equities, and to require an applicant to indicate whether the applicant is offering rental as part of their equity statement, and, if so, the amount.

The proposed rule also establishes a time for filing a conflicting application on unleased State Trust lands.

The former rules regarding conflicting applications were obsolete, did not address what was expected in an applicant's statement of equity and did not differentiate between applications for leased land or unleased land.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Department proposes to adopt rules that address the processing of conflicting applications when two or more applicants apply to lease or use State Trust land (surface estate only) for the same purpose.

The Department maintains 9,475 active leases, permits, rights of ways and sales contracts on 9.3 million acres of the Trusts' surface estate. Of these contracts, 2,674 leases and permits (28%), categorized as Grazing, Commercial, Agriculture, Special Use Permits, U.S. Government and Homesite encompassing 8.9 million acres (96%), are subject to the "conflict application" rule adoption. Collectively, these leases and permits earned \$18.6 million in FY02. The Department receives approximately 450 potentially conflicting applications in these categories annually. A review of

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Departmental records for the past 25 years reveals an average of nine conflicting application cases are processed by the Department each year.

The requirements of the proposed rule apply equally to each applicant. Costs to the applicant may include an application fee, clerical costs, staff time, and consultant or legal fees to prepare the application and statement of equity. An applicant may incur additional costs if the applicant files an appeal or elects to litigate the Department's decision regarding a conflicting application issue. Other costs to the applicant may also include reimbursement to a former lessee for an approved non-removable improvement.

Generally, the Department's costs to process conflicting applications are proportional to the number and complexity of the issues arising from the conflicting application. Costs to the Department include staff time to review an application and supporting data. These costs will increase if Departmental decisions regarding a conflicting application case is appealed or litigated.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Richard B. Oxford, Director  
Land Information, Title & Transfer Division

Address: Arizona State Land Department  
1616 W. Adams  
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No public proceeding is scheduled. A person may submit written comments to or request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5:00 p.m. June 3, 2003 to the following person:

Name: Richard B. Oxford, Director  
Land Information, Title & Transfer Division

Address: Arizona State Land Department  
1616 W. Adams  
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

**11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 5. STATE LAND DEPARTMENT**

**ARTICLE 5. LEASES**

Section

R12-5-505. ~~Application for Land Included under Existing Lease or Permit~~ Time for Filing Conflicting Applications  
R12-5-506. ~~Two or More Applications for Lease or Permit~~ Procedure in Processing Conflicting Applications  
R12-5-516. ~~Time for Filing Conflicting Applications~~ Repealed  
R12-5-534. ~~Rules of procedure in conflicts~~ Repealed

**ARTICLE 5. LEASES**

**R12-5-505. Application for Land Included under Existing Lease or Permit Time for Filing Conflicting Applications**  
~~Where an application for lease or permit covers land already under lease or permit for the same purposes, such application will be rejected by the Commissioner to the extent that the lands described therein are included within an existing lease or permit.~~

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**A. Unleased Land**

If an application is filed on unleased land, and a proposed lease, permit, or right of way document has been offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.

**B. Land Under Lease for the Same Purpose**

The Department shall not accept a conflicting application for a lease unless the application is filed within the time period prescribed by A.R.S. § 37-284.

**C. Land Under Permit for the Same Purpose Where the Use Is Exclusive**

An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.

**D. For the purpose of this Article, conflicting applications are defined as two or more lease applications to use State Trust surface land for the same purpose; or, two or more permit applications to use State Trust surface land for the same purpose.**

**R12-5-506. Two or More Applications for Lease or Permit Procedure in Processing Conflicting Applications**

Except as otherwise provided by law or specifically by these rules and regulations, if two or more applicants apply for lease or permit on the same land for the same purpose, the Commissioner shall approve the application of the one who, after investigation or hearing by the Commissioner, appears to have the best right to such lease or permit. If it appears that none of the applicants has any right or equities superior to those of another, the Commissioner may reject and deny all applications, or he may at a stated time and after due notice to all such applicants, receive sealed bids submitted in accordance with such requirements he may make, and shall approve the application of the bidder who, in all respects, is eligible to holding a lease or permit upon the land and will pay the highest annual rental therefor, or the Commissioner may reject all bids.

If such lands are offered for bid, the Commissioner shall issue a notice for call of sealed bids, stating in said notice the time and place said sealed bids will be accepted and the minimum rental there for that will be accepted by the Commissioner. A copy of the form of lease that will be issued to the successful bidder in bidding will be enclosed with said notice, together with the written form of bid to be submitted by the successful bidder.

Said bids shall be submitted on the form enclosed in the notice, filled out and signed by the bidder, placed in an envelope addressed to the State Land Commissioner with the number of the bid on the outside thereof, together with the first year's rental at the annual rental bid. Failure to provide the annual rental amount or receipt of a check for the amount drawn on insufficient funds, will give the Commissioner the right to withdraw the bid covered by these insufficient funds. Money received from an unsuccessful bidder will be returned following award of the lease or permit. The envelope with enclosures may be delivered in person or placed in an envelope and mailed to the State Land Commissioner. No bid will be received from anyone other than the applicants named in said notice and call for sealed bids.

At the time and place stated in said notice and call for bids, the bids will be opened and publicly read by the Commissioner, or his representative, and no bid will be considered for an annual rental less than the minimum rental stated in said notice and call for sealed bids.

**A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall notify all applicants of record of the conflicting applications and shall require each applicant to submit a statement of equities containing the basis of the applicant's claim to the lease or permit. The Department shall require in the Notice of Conflicting Applications that each applicant file a statement of equities with the Department and serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. Failure of any applicant to submit a statement of equities does not preclude the Department from examining evidence or records, or reviewing testimony from a hearing conducted under subsection (E)(2) and making a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.**

**B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer such oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors to be considered pursuant to subsection (D).**

**C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.**

**D. In conducting an investigation and review, the Department shall consider the following factors:**

1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;
2. Whether the applicant's proposed land use or land management plan is beneficial to the Trust;
3. The applicant's access to or control of facilities or resources necessary to accomplish the proposed use;
4. Willingness of the applicant to reimburse the owner of reimbursable non-removable improvements;
5. Previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;

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6. Experience associated with proposed use of land;
  7. Impact of the proposed use on future utility and income potential of the land.
  8. Impact to surrounding state land;
  9. Recommendations of the Department's staff; and
  10. Any other considerations in the best interest of the Trust.
- E.** After investigation and review of the statements of equities, the Department may:
1. Request additional information from an applicant;
  2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
  3. Award the lease or permit to an applicant;
  4. Reject all applications; or
  5. Proceed to bid according to A.R.S. § 37-284.
- F.** The bid process is as follows:
1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.
  2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall only accept a bid form with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.
  3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.
  4. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.
- G.** Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

**R12-5-516. ~~Time for Filing Conflicting Applications Repealed~~**

~~If no application for lease or permit, other than application for renewal by a prior lessee or permittee, has been filed on or before the date of the expiration of said lease or permit, no further application shall be accepted, unless the Commissioner should determine that the prior lessee or permittee does not have a preference right to renew his lease or permit or that the continued leasing of said land is not for the best interests of the state.~~

~~Where an application is filed on open land, the Commissioner shall have authority to fix the time when no further applications shall be accepted by the Commissioner. Notice of such time shall be made of record and posted in the Department.~~

**R12-5-534. ~~Rules of procedure in conflicts Repealed~~**

~~Whenever it shall appear that two or more persons have applied for a lease or permit on the same lands, the Commissioner may notify all parties in interest of record of the conflict of such existing applications and may in such notice require of each of the applicants to furnish a statement of facts upon which the applicant bases his preferential right to such lease or permit. In such event, said notice shall require each applicant to file with the Commissioner and serve a copy upon the other applicants within 30 days from the date of such notice, unless such time is extended by the Commissioner or by stipulation of the parties, his statement of equities or claim of preferential right to lease or permit, clearly setting forth all of the grounds upon which he bases his claim to preference. Service of a copy of the statement of claim or preferential right on all parties in interest shall be made as in these rules provided, and evidence of such service shall be made within ten days from the date thereof.~~

~~In each instance the statement of claim must be verified under oath before some officer authorized under the laws of the state of Arizona to administer such oaths, or, in lieu thereof, the applicant may affix his signature to the statement of claim accompanied by a certification under penalty of perjury that the information contained in the statements is to the best of applicant's knowledge and belief true, correct and complete.~~

~~Each applicant within ten days from the date of the receipt of the statement of claim of the conflicting applicant may file with the Commissioner and serve upon opposite parties a responsive answer or pleading to the conflicting applicant's statement or claim of preferential right. Evidence of such service shall be filed as provided above.~~

~~In case an oral hearing is demanded by any of the conflicting applicants, such demand must be made in writing and accompany the preferential statement of equities or claim of preferential right, and a copy of said demand must be served upon the opposing applicant in the same manner and at the same time as the claim for preferential right or statement of equities are served.~~

~~Upon receipt of said statement of equities and demand for a hearing, the Commissioner shall set the matter down for hearing at his office, or such other place as he may designate, at the earliest practicable date, giving notice of said time and place for hearing to all parties in interest of record.~~

**Notices of Proposed Rulemaking**

~~If no oral argument has been requested or ordered by the Commissioner, the Commissioner will determine whether anyone of the applicants has the right to the lease or permit upon such lands based upon the equities or preferential rights to lease or permit submitted by the various parties to the proceedings and upon the record before the Commissioner.~~

~~If the Commissioner should find from the evidence submitted to him that none of the applicants has a preference right to lease or permits, he will notify them of such fact and may deny all applications of record or offer said lease or permit to the highest bidder among the applicants on the basis of sealed bids submitted to the Commissioner in accordance with these rules and regulations.~~

~~Failure of any applicant to submit his statement of equities or claim of preferential right as above prescribed or to appear at the hearing set therefor will not preclude the Commissioner from examining the evidence and records or from hearing testimony submitted by the other conflicting applicants and making his decision thereon.~~

~~Nothing herein shall be construed to limit or diminish the jurisdiction of the Commissioner.~~

~~This rule shall not apply to oil and gas lease conflicts.~~